IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 2436 of 1995

For Approval and Signature:

HON'BLE MISS JUSTICE R.M. DOSHIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

PRAJAPATI MAFATLAL KANJIDAS

Versus

MEHSANA NAGRIK SAHKARI BANK LTD.

Appearance:

1. Special Civil Application No. 2436 of 1995

MR SHIRISH JOSHI for Petitioners

Respondents :: Served

CORAM : HON'BLE MISS JUSTICE R.M.DOSHIT

Date of decision: 22/04/2004

ORAL JUDGEMENT

The petitioners before this Court were the

partners in a partnership firm-Tirupati Trading Company [hereinafter referred to as "the Firm"]. The petitioners challenge the judgment and order dated 21st October, 1994 passed by the Gujarat State Cooperative Tribunal, Ahmedabad [hereinafter referred to as, "the Tribunal"] in Appeal No. 506 of 1993.

The Firm was member of the Mehsana Nagrik Sahakari Bank Limited, a Cooperative Society [hereinafter referred to as, "the Society"] registered under the Gujarat Cooperative Societies Act, 1961 [hereinafter referred to as, "the Act"]. In or around the month of January, 1988, the Society had extended cash credit facility in the sum of Rs. 1,00,000/= to the Firm. In the month of March 1989, the said facility was renewed for a sum of Rs. 1,25,000/=. The Firm failed to repay the said loan amount. Eventually, the Society instituted Suit No. 1876 of 1990 before the Board of Nominees of the Registrar for recovery of a sum of Rs. 1,13,911=16 paise and interest against the Firm, its partners and the sureties. The said suit came to be allowed by the judgment and decree dated 24th November, 1993 against the Firm and the sureties but was dismissed against the partners in the Firm. The Board of Nominees recorded that the Firm and the sureties were members of the Society. But, the partners in the Firm were not the members of the Society. The Board of Nominees, therefore, refused to pass decree against the partners in the Firm.

Feeling aggrieved, the Society preferred above referred Appeal No.506 of 1993 before the Tribunal. The sureties preferred Appeal No.56 of 1994 in so far as the decree was passed against them. By the impugned judgment and order dated 21st October, 1994, the Tribunal dismissed Appeal No.56 of 1994 preferred by the sureties. The Appeal No.506 of 1993 preferred by the Society was partially allowed. The Tribunal held that not only the Firm and the sureties but the partners in the Firm also were personally liable for the dues of the Society. Order was made accordingly. Feeling aggrieved, four of the partners in the Firm, the petitioners have preferred the present petition under Article 227 of the Constitution of India.

Learned advocate Mr. Joshi has relied upon Section 96 of the Act. Mr. Joshi has submitted that the Board of Nominees shall have jurisdiction to entertain and try the dispute touching the constitution, management or business of a society provided the parties to the dispute fall in the categories mentioned in Clauses (a)

or (b) thereof. He has submitted that to fall within the categories mentioned in aforesaid Clause (b), a party should necessarily be either a member of the Society or be claiming through the member of the Society. In the present case, indisputably, none of the petitioners was member of the Society. The dispute between the Society and the petitioners, therefore, could not have been entertained and resolved by the Board of Nominees. Hence, the Tribunal had no authority or jurisdiction to try the dispute in question or to pass decree against the petitioners. In the alternative, he has submitted that the decree passed by the Tribunal cannot be executed personally against the petitioners. He has submitted that the Tribunal has erred in relying upon section 25 of the Indian Partnership Act, 1932 and in holding that the partners in the Firm were personally liable to meet the liability of the Firm under the decree. In support of his contentions, Mr. Joshi has relied upon the judgments in the matter of Natwarlal Balabhai Shah & Ors. vs. Dakor Cooperative Sale & Ginning & Pressing Society Limited, Dakor & Ors. [2 GLR 299] and Rasiklal Patel & Ors. v. Kailasgauri Ramanlal Mehta & Ors. [1971 GLR 355]. Mr. Joshi has also relied upon the judgment in the matter of Her Highness Maharani Madalsa Devi & Ors. vs. M.Ramnarain Private Limited & Ors. [AIR 1965 SC 1718].

Section 96 of the Act confers power upon the Registrar or its nominee to entertain and resolve any dispute touching the constitution, management or business of a Society; if parties thereto are from amongst the following :-

[a] a society, its committee, any past committee, any past or present officer, any past or present agent, any past or present servant or nominee, heir or legal representative of any deceased officer, deceased agent or deceased servant of the society, or the Liquidator of the society;

[b] a member, past member or a person claiming through a member, past member or a deceased member of a society, or a society which is a member of the society;

[c] a person, other than a member of the society, who has been granted a loan by the society, or with whom the society has or had transactions under the provisions

of section 46, and any person claiming through such a person;

[d] a surety of a member, past member or a deceased member, or a person other than a member who has been granted a loan by the society under section 46, whether such a surety is or is not a member of the society;

[e] any other society, or the Liquidator of such a society.

The constitutional validity of Section 96 of the Act was subject matter of challenge before this Court in the matter of Rasiklal Patel & Ors. [Supra]. This Court was of the opinion, inter alia, that clause [c] of Section 96 was violative of principle of equality enshrined in Article 14 of the Constitution of India in as much as it confers benefit upon a Society of availing of special jurisdiction conferred upon the Registrar or its nominee against a non member. Whereas, in case of non members, it confers a similar jurisdiction with respect to specific categories of non-members alone. The Hon'ble Court, therefore, held that, "clauses (c), (d) & (e) and the words, "any past or present agent" and "deceased agent" in clause (a) of Section 96 (1) alongwith Explanation II which make the special procedure set out in the impugned provisions applicable only to certain specified categories of non-members are ultra vires and void as offending Article 14 of the Constitution."

In the matter of Natwarlal Balabhai Shah & Ors. [Supra], a similar question of jurisdiction was raised before the Division Bench of this Court. In the said matter, the plaintiff-Society had sued the defendant partnership-firm and its eight partners for recovery of its dues before the Board of Nominees. The question which arose before this Court was, `Had the Registrar's nominee jurisdiction under Section 54 of the Act to entertain a claim against the four petitioners on the footing that the dispute touching the business of the Society with them as members.' In the said case, neither the partnership firm nor all the partners in the firm were members of the Society. Of the 8 partners in the firm, four were members of the society. The Hon'ble Court considering the question of jurisdiction of Registrar or its nominee to entertain the dispute in question under Section 54 of the Bombay Cooperative

Societies Act, 1925 [identical in pari materia to Section 96 (1) of the Act] held that, "..But, we fail to see how that principle of joint and several liability can be pitchforked into a provision relating to jurisdiction of the Registrar or his nominee with which alone we are concerned. It is, as we have already mentioned an antecedent condition of assumption of jurisdiction by the Registrar or his nominee that the dispute must exist between the society on the one hand and the member on the other. ...In our opinion, it would be erroneous to say that the contract is with the four partners. The contract would not be with the four partners, but the contract would be with all the eight partners. ....We have to see whether in the case before us a dispute touching the business of the society can be said to have arisen between the society and the four partners. In our opinion, the language of the section is clear and does not permit of any such extended meaning." In the present case, as the Firm itself was the member of the Society and as the partners in a firm are liable for the dues of the firm, this judgment shall lend no support to the petitioners.

In the matter of Her Highness Maharani Madalsa Devi [Supra], a decree came to be passed against a firm and its partners. One of the partners being the former ruler, consent of the Central Government as envisaged by section 86 read with section 87B CPC was required to be obtained. Though such consent was not obtained, the suit was tried and decreed. In the execution proceedings, contention was raised that in absence of such consent of the Central Government, the decree passed against the firm and its partners was not executable. The Hon'ble Supreme Court observed that, "when a firm's name is used, it is only a convenient method of denoting those persons who compose the firm at the time when that name is used, and a plaintiff who sues partners in the name of their firm in truth sues them individually, just as much as if he had set out all their names. The decree passed in the suit, though in form against the firm, is in effect a decree against all the partners." The Hon'ble Court held that, "..Consequently, the suit so far as it was one against the Maharaja of Sirmur was incompetent and the decree against the firm so far as it is a decree against him was a nullity." But the Hon'ble Court rejected the contention that the suit was wholly void. The Hon'ble Court held that, ".. But the suit against the firm other than the Maharaja of Sirmur was competent, and a decree could be executed against the partnership property and against the other partners by following the procedure of Order 21, Rule 50 of the Code of Civil Procedure." This

judgment also shall not apply to the facts of the present case, as I shall presently hold that as the petitioners were the partners in the Firm, their liability for the dues of the Firm shall arise under the Partnership Act. The Board of Nominees had jurisdiction to entertain the suit against the petitioners as the partners in the Firm.

The Tribunal and the Board of Nominees have recorded concurrent findings that the Firm was the member of the Society; that the defendants nos. 8 & 9, the sureties also were the members of the Society; the defendants nos. 2 to 7 were not the members of the Society; that on the date when cash credit facility was advanced to the Firm, the defendants nos. 2 to 7 were the partners in the Firm. The said findings are not challenged before me. It is also not in dispute that the dispute raised before the Board of Nominees is one touching the business of the Society. As recorded hereinabove, the only contention that is raised before me is as to the jurisdiction of the Board of Nominees to entertain the suit against the defendants nos. 2 to 7, the partners or in the alternative the executability of the decree passed by the Board of Nominees against the said defendants.

I am unable to agree with the contention that the individual partners in the Firm not being members of the Society the suit for recovery against the partners individually would not lie before the Board of Nominees or that the decree passed against the Firm by the Board of Nominees will not be liable to be executed against the individual partners. The liability of the partners for the debts of the partnership firm arises under the Indian Partnership Act, 1932 [hereinafter referred to as, "the Act of 1932"] and not under the Act. Section 25 of the Act of 1932 stipulates that the partners are jointly and severally liable for all the acts of the firm while he is a partner. In my view, therefore, the liability of the petitioners arise under the Act of 1932 and are jointly and severally liable for the dues of the Firm.

This issue can be examined from another angle also. Section 103 of the Act provides for execution of the orders/decree passed by the Registrar or its nominee or the Tribunal before the Civil Court under the provisions of the CPC or as land revenue under the Bombay Land Revenue Code. Order 21 Rule 50 CPC provides for execution of decree against the firm. Sub-rule (1) of Rule 50 of Order 21 provides that the execution of a decree passed against the firm may be granted : (a) against the property of the partnership; (b) against any

person who has appeared in his own name or who has admitted on the pleadings that he is, or who has been adjudged to be, a partner; (c) against any person who has been individually served as a partner with a summons and has failed to appear. Sub-rule (2) thereof reads as under :-

> "(2) Where the decree holder claims to be entitled to cause the decree to be executed against any person other than such a person as is referred to in sub-rule (1), clauses (b) and (c), as being a partner in the firm, he may apply to the Court which passed the decree for leave, and where the liability is not disputed, such Court may grant such leave, or, where such liability is disputed, may order that the liability of such person be tried and determined in any manner in which any issue in a suit may be tried and determined."

Thus, in a case where a person has not been impleaded in a suit against the partnership firm as a partner in such firm, decree passed against such firm can be executed personally against such partner in the manner provided in the aforesaid sub-rule (2). Therefore, in the present case, even if the petitioners were not impleaded to the suit before the Board of Nominees, the decree passed against the Firm could have been executed personally against the petitioners in Civil Court in accordance with the aforesaid Rule 50 of Order 21 of CPC. If the contention of Mr. Joshi were accepted an anomalous situation would arise i.e. the decree passed by the Board of Nominees against a partnership firm can be executed against the partners individually before the Civil Court in the manner provided in Order 21 Rule 50 CPC but the said decree cannot be executed against the partners individually by revenue procedure. Cardinal principle of interpretation of statute requires that the construction which leads to an anomalous situation should be avoided.

There is one more reason why the contention raised by Mr. Joshi cannot be accepted. If the construction put by Mr. Joshi were accepted, it would lead to multiplicity of litigation before different forums and to possibility of conflicting decisions. As recorded hereinabove, the Firm being member of the

Society, the Board of Nominees shall have exclusive jurisdiction to try and resolve the dispute in question excluding the jurisdiction of the Civil court. The partners in the Firm not being members of the Society individually, they would be required to be sued before the Civil Court in the same subject matter. Thus, in the same subject matter, there would be two separate proceedings before two different and distinct forums having different appellate forums. Undoubtedly, the Legislature could not have intended such drastically anomalous consequences.

In view of the above discussion, in absence of any specific provision to the contrary, I am of the view that though the petitioners individually were not members of the Society, the Board of Nominees had jurisdiction to entertain the suit against the petitioners as the partners in the Firm [the Firm itself being member of the Society], the execution of decree passed by the Board of Nominees against the Firm can be granted against the partners individually. In other words, the partners in a firm shall be jointly and severally liable for decree passed against the firm regardless of the fact that such partners individually are not members of the Society.

The petition is accordingly dismissed. Rule is discharged. The parties shall bear their own costs.

{Miss R.M Doshit, J.}

Prakash*